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**SPECIAL PROGRAM
EXAMINATION UNIT**

In re Application of :
Collins et al :
Application No. 08/238,080 : DECISION DISMISSING PETITION
Filed: May 3, 1994 :
Attorney Docket No. 2583511 :

This is in response to the petition filed July 5, 1994, requesting that the above-identified application be accorded a filing date of May 3, 1994. The petition has just recently been forwarded to this Office for consideration. Any delay in considering the petition is regretted.

On May 3, 1994, the application was deposited with a copy of a declaration.

On June 3, 1994, Application Division mailed a Notice stating that the application had been accorded a filing date and requiring an oath or declaration in compliance with 37 CFR 1.63. The surcharge under 37 CFR 1.16(e) was also required.

In response, on July 5, 1994, the present petition, including an authorization to charge counsel's deposit account for the requisite petition fee, was filed. Petitioners argue that a true copy of the prior application Serial No. 07/944,505, including the declaration, was submitted on filing. It was noted that a petition to revive was submitted in the prior application and that upon granting of the petition to revive copendency would exist between the prior application and the above-identified application. Petitioners request that the application be converted to an application filed under 37 CFR 1.60, accorded a filing date of May 3, 1994 and the petition fee be refunded.

A review of the record reveals that the application, as filed, was accompanied by a copy of a declaration. Petitioners state that the specification, as filed, is the specification that was executed when the declaration was signed. Therefore, a

specification and a declaration which executed the specification were submitted on filing. Effective November 22, 1993, a copy of a declaration may be submitted in a patent application.

(See 37 CFR 1.4, and 58 FR 54494 (October 22, 1993)).

Accordingly, there were no missing parts of an application on filing. However, a review of the declaration reveals that it is stale. (See MPEP 602.05.) The matter of a stale declaration must be treated during the prosecution of the application.

A further review of the prior application Serial No. 07/944,505 reveals that the petition to revive was dismissed in a decision mailed October 27, 1994. Therefore, copendency does not exist between the prior application Serial No. 07/944,505 and the above-identified application. Accordingly, the application would not have been entitled to a filing date under 37 CFR 1.60.

In view of the above, the petition is dismissed as moot. No petition fee is required and none has been charged to counsel's deposit account.

The Notice mailed June 3, 1994, was sent in error and is hereby vacated.

If petitioners desire that the above-identified application be entitled to claim 35 USC 120 benefit based on application Serial No. 07/944,505, then appropriate steps must be taken pursuant to 37 CFR 1.137(a), to revive application Serial No. 07/944,505 to establish copendency between Serial Nos. 07/944,505 and the above-identified application. It is noted that in application Serial No. 07/944,505, a petition to revive under 37 CFR 1.137(b) was dismissed in a decision mailed October 27, 1994. Inquiries regarding petitions to revive should be directed to the Office of Petitions at (703) 305-9282. Applicants should not construe this suggestion as an indication that any such petition will necessarily be granted.

The application is being forwarded to Application Division for further processing with a filing date of May 3, 1994.

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